Office of the Clerk, Supreme Court, U.S.
FILED
JUN 24 1982
ALEXANDER L. STEVAS,
CLERK

81-2355

No.

In the Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STATES OF AMERICA, PETITIONER

v.

IONIAN GLOW MARINE, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether a private shipowner may collect contribution from the United States for damages paid to servicemen injured on active duty in a maritime collision.

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IONIAN GLOW MARINE, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-4a) is reported at 670 F.2d 462. The opinion of the district court (App. B, *infra*, 5a-13a) is reported at 510 F. Supp. 196.

JURISDICTION

The judgment of the court of appeals (App. C, *infra*, 14a-15a) was entered on January 26, 1982. On April 23, 1982, the Chief Justice extended the time for filing a petition for a writ of certiorari to June 25, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 1 of the Public Vessels Act, 46 U.S.C. 781, provides:

> A libel in personam in admiralty may be brought against the United States, or a petition impleading the United

States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920.

STATEMENT

1. On March 4, 1979, the M/V STAR LIGHT, a Greek flag cargo vessel owned by Ionian Glow Marine, Inc. ("Ionian Glow"), collided with the USS FRANCIS MARION, an amphibious attack transport of the United States Navy line commissioned as a surface combat vessel, off Cape Henry, Virginia (C.A. App. 37). [1] Both vessels were damaged, and three crew members on active duty aboard the USS FRANCIS MARION were injured (App. A, *infra*, 1a). On March 9, 1979, Ionian Glow filed a complaint in the United States District Court for the Eastern District of Virginia, seeking limitation of liability under 46 U.S.C. 181 *et seq.* (C.A. App. 1, 11-14). The government and the three injured servicemen then filed claims for damages arising out of the collision. Ionian Glow asserted a counterclaim under the Public Vessels Act, 46 U.S.C. 781 *et seq.*, against the United States and the FRANCIS MARION. It sought damages for the injury to its ship and contribution for any damages that might be assessed against Ionian Glow in favor of the three servicemen (C.A. App. 17-29). Before trial Ionian Glow settled the claims of the injured servicemen for a total of $700,000 (App. A, *infra*, 2a).

The United States and Ionian Glow agreed that the United States would pay 35% of Ionian Glow's provable damages and that Ionian Glow would pay 65% of those incurred by the United States, in accordance with the admiralty rule of apportioning damages arising out of collisions. The parties presented to the district court on cross-motions for partial summary judgment the question whether Ionian Glow's provable damages could include the $700,000 it paid to the three servicemen in settlement of their claims (App. B, *infra*, 5a). The govern-

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[1] "C.A. App." refers to the joint appendix in the court of appeals.

ment contended that its direct and indirect liability for injuries to servicemen on active duty was limited to compensation payable under the Veterans' Benefits Act, 38 U.S.C. 301 *et seq.* [2] See *Stencel Aero Engineering Corp.* v. *United States*, 431 U.S. 666 (1977); *Feres* v. *United States*, 340 U.S. 135 (1950).

2. The district court granted the government's motion for partial summary judgment (App. B, *infra*, 5a-13a). The court recognized that the Public Vessels Act, 46 U.S.C. 781 *et seq.*, waives the government's sovereign immunity for damages incurred by private parties in mutual fault collisions. But the court found that that waiver does not extend to claims against the United States by members of its armed forces (App. B, *infra*, 8a), just as the waiver of sovereign immunity in the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, does not extend to servicemen's claims. *Feres* v. *United States*, *supra*. See *Charland* v. *United States*, 615 F.2d 508 (9th Cir. 1980); *Beaucoudray* v. *United States*, 490 F.2d 86 (5th Cir. 1974). The district court found equally applicable in suits under the Public Vessels Act the corollary rule applied under the Federal Tort Claims Act—that the *Feres* doctrine also prohibits recovery of indemnity or contribution against the United States when a joint tortfeasor has paid damages to an injured service member. *Stencel Aero Engineering Corp.* v. *United States*, *supra*.

3. The court of appeals reversed (App. A, *infra*, 1a-4a). The court recognized that "if this * * * suit were in the form of an indemnity suit under the FTCA it would be barred * * * by the *Feres-Stencel Aero* doctrine" (*id.* at 2a). But because the litigation arose from a maritime collision, the court concluded that *Weyerhaeuser Steamship Co.* v. *United States*, 372 U.S.

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[2] Commander Robert Leary remained on active duty after the collision and, having received medical care for his injuries and drawn his normal salary, is not expected to receive any disability payments under the Act. The same is true of Chief Petty Officer Louis Colley, who retired with no disability. Lt. Commander Donald Miller, the most seriously injured of the three, is still on active duty pending a determination of his disability status and entitlements by a medical discharge evaluation board (App. B, *infra*, 5a n.1).

597 (1963), controlled the issue of the government's immunity. *Weyerhaeuser* held that the owner of a private vessel involved in a collision was entitled in admiralty law to contribution from the United States for damages paid to an injured civil servant, even though the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*, was the employee's sole recourse against the United States. Though it did not address the policies underlying *Feres* and *Stencel Aero*, the court stated that it saw "[n]othing in [these decisions which] convinces us that the Supreme Court intended to alter the *Weyerhaeuser* rule. Until that Court expresses its intention to modify the rule in *Weyerhaeuser*, we are bound to follow it" (App. A, *infra*, 3a-4a).

REASONS FOR GRANTING THE PETITION

The United States has not waived its sovereign immunity to either direct or derivative claims for damages arising out of injuries to military personnel on active duty. The government's direct liability to injured service members is limited to the benefits afforded by the Veterans' Benefits Act, 38 U.S.C. 301 *et seq.*, a statutory no-fault compensation scheme. In *Stencel Aero Engineering Corp.* v. *United States*, *supra*, 431 U.S. at 673, quoting *Laird* v. *Nelms*, 406 U.S. 797, 802 (1972), this Court held that allowing a joint tort-feasor to recover from the United States any additional damages paid to a serviceman " 'would be to judicially admit at the back door that which has been legislatively turned away at the front door.' " The court of appeals' decision accepts that principle for the government's indirect liability to servicemen injured on land and in the air, but creates another rule for those injured at sea. This anomaly not only frustrates the purpose of the Veterans' Benefits Act, but also ignores the concerns voiced in *Stencel Aero*, 431 U.S. at 673, and *United States* v. *Brown*, 348 U.S. 110, 112 (1954), about judicial scrutiny of the relation between a serviceman and his superiors. The Court has recently reiterated that " '[i]t is difficult to conceive of an area of governmental activity in which the courts have less competence' " than military affairs or where the peculiar dynamics of discipline and decisionmaking are more " 'subtle' " and " 'complex.' " *Rostker* v. *Gold-*

berg, 453 U.S. 57, 65 (1981), quoting *Gilligan* v. *Morgan*, 413 U.S. 1, 10 (1973). An action for indemnity such as that allowed by the court below presents the same threat to military discipline and decisionmaking as would a direct action by a serviceman against the United States.

The court of appeals' decision, although incorrect, is at least understandable in light of the tension that exists between this Court's holdings in *Feres* v. *United States*, *supra*, and *Stencel Aero*, on the one hand, and its decision in *Weyerhaeuser Steamship Co.* v. *United States*, *supra*, on the other. In general terms, these cases seem to direct different outcomes when the government is sued for indemnity or contribution because of injuries to a federal employee covered by a statutory compensation scheme. It is important for this Court to resolve that tension in the context of maritime collisions involving the military, which occur with some regularity and threaten the government with considerable monetary liability.

1. The considerations that underlie this Court's decisions in *Feres* and *Stencel Aero* make apparent that the government's liability for contribution or indemnity on account of injuries to its servicemen on active duty should not vary with the branch of service or the location of the injury. *Feres* v. *United States*, *supra*, rejected the right of soldiers in the Army to recover under the Federal Tort Claims Act (FTCA) for negligent medical treatment and unsafe quarters. Although the Court saw indications in the FTCA that such claims might be permitted, 340 U.S. at 138-139, it found more compelling an interpretation that would "fit * * * into the entire statutory system of remedies against the Government * * * " (*id.* at 139). One component of that structure was a congressionally established "system[] of simple, certain, and uniform compensation for injuries or death of those in the armed services," intended to provide exclusive recourse for injured or deceased service members and those suing on their behalf (*id.* at 144). The very fact that Congress made no effort in the FTCA to adjust "these two types of remedy * * * is persuasive that there was no awareness that the [FTCA] might be interpreted to permit recovery for injuries incident to military service" (*ibid.*). A

second factor was that the recognition of tort liability in this context would impermissibly disrupt the "peculiar and special relationship of the soldier to his superiors * * *." *United States* v. *Brown*, *supra*, 348 U.S. at 112; *Feres* v. *United States*, *supra*, 340 U.S. at 141-143. Third, the Court observed that recognition of tort actions by servicemen would subject their recovery to the vagaries of state law in a manner inconsistent with the uniquely federal relationship of the soldier to his government (*id.* at 143).

The same considerations were again decisive when this Court, in *Stencel Aero Engineering Corp.* v. *United States*, *supra*, rejected a joint tortfeasor's claim under the FTCA for indemnity after a National Guard pilot was injured on duty. Stencel Aero, a subcontractor, had manufactured the ejection system whose malfunction injured the pilot, and when sued by the pilot for negligence it cross-claimed against the United States. The Court concluded that such a third-party action "is unavailable for essentially the same reasons that the direct action * * * is barred by *Feres*." 431 U.S. at 673.

In this case Ionian Glow seeks to recover contribution under the Public Vessels Act, 46 U.S.C. 781 *et seq.*, for damages paid to crew members in the Navy. Like the FTCA, the Public Vessels Act is silent on the liability of the United States stemming from injuries to servicemen on active duty. It is clear, however, that just as in *Feres* no direct action against the government was permitted under the FTCA, so no direct action by a serviceman against the government is permitted under the Public Vessels Act. See *Johansen* v. *United States*, 343 U.S. 427, 440 (1952) (civilian crew on public vessels); *Charland* v. *United States*, 615 F.2d 508 (9th Cir. 1980); *Beaucoudray* v. *United States*, 490 F.2d 86 (5th Cir. 1974). See also *Dobson* v. *United States*, 27 F.2d 807, 808-809 (2d Cir. 1928), cert. denied, 278 U.S. 653 (1929). By the same token, the considerations crucial to the decisions in *Feres* and *Stencel Aero* preclude any indirect action against the United States under the Public Vessels Act as well.

a. One argument advanced in *Stencel Aero* was that *Feres*' emphasis on the exclusivity of the serviceman's compen-

sation remedy should not be extended to third parties who had no right to recover under the Veterans' Benefits Act. This Court responded (431 U.S. at 673; emphasis added; citations omitted):

> A compensation scheme such as the Veterans' Benefits Act serves a dual purpose: it not only provides a swift, efficient remedy for the injured serviceman, but it *also clothes the Government in the "protective mantle of the Act's limitation-of-liability provisions."* * * * Given the broad exposure of the Government, and the great variability in the potentially applicable tort law, * * * *the military compensation scheme provides an upper limit of liability for the Government as to service-connected injuries.* To permit petitioner's claim would circumvent this limitation, thereby frustrating one of the essential features of the Veterans' Benefits Act. As we stated in a somewhat different context * * *: *"To permit [petitioner] to proceed . . . here would be to judicially admit at the back door that which has been legislatively turned away at the front door.* We do not believe that the [Federal Tort Claims] Act permits such a result."

See also *Hatzlachh Supply Co.* v. *United States*, 444 U.S. 460, 464 (1980) (Veterans' Benefits Act is "the sole remedy [against the government] for service-connected injuries"). There is no reason to believe that the "limitation-of-liability provisions" of the Veterans' Benefits Act have any less force when contribution claims are asserted under the Public Vessels Act, rather than under the Federal Tort Claims Act. Nothing in the former statute suggests that maritime contribution claimants are more worthy of governmental concern than similar claimants under the FTCA. [3]

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[3] Indeed, a comparison of the facts in this case and *Stencel Aero* might suggest precisely the opposite. Stencel Aero alleged that its negligence was merely passive, and that the principal fault for the injury to the government's pilot lay with the United States. 431 U.S. at 668. In this case it was agreed that respondent bore the greater share of the fault (65%) for the collision that is the basis for its contribution claim.

b. The second of the factors relied on in *Stencel Aero* was the effect that allowing suits for indemnity or contribution could have on military discipline. Military service entails special requirements of discipline and order that contrast sharply with relationships among private citizens. See *Rostker* v. *Goldberg*, *supra*, 453 U.S. at 65-66; *Brown* v. *Glines*, 444 U.S. 348, 356-357 (1980); *Greer* v. *Spock*, 424 U.S. 828, 837-838 (1976); *Parker* v. *Levy*, 417 U.S. 733, 743-749 (1974); *Orloff* v. *Willoughby*, 345 U.S. 83, 93-94 (1953). Crucial characteristics of that setting are "[v]igor and efficiency on the part of the officer and confidence among the soldiers in one another." *In re Grimley*, 137 U.S. 147, 153 (1890). This Court accordingly recognized in *Feres* and later cases that Congress did not intend the courts to pass on the propriety of military decisions or to place members of the service in the position of having to testify in an adversarial setting as to each other's actions. The prospect of judicial scrutiny, and of potential governmental tort liability, might exert improper pressures on officers and result in hesitation where decisive judgment is required. *Stencel Aero* recognized that allowing third parties a right of recovery would entail identical consequences. It would place the United States and members of its armed forces in an adversarial relationship in which recovery would turn on "the degree of fault, if any, on the part of the Government's agents and the effect upon the serviceman's safety. The trial [of a third-party claim] would * * * involve second-guessing military orders, and would often require members of the Armed Services to testify in court as to each other's decisions and actions" in a manner inimical to military discipline and order. 431 U.S. at 673. The same concerns would be present if private shipowners were permitted to seek contribution against the United States for damages paid to servicemen injured in a maritime collision. [4]

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[4] It is true that in cases such as this there will almost necessarily be claims of mutual property damage and that the owner of a private vessel may seek to call servicemen as witnesses to establish the negligence of the United States even if contribution claims for per-

c. The third factor mentioned in *Stencel Aero* was the irrationality of permitting the liability of the United States for the injury of an active serviceman to turn entirely on the "fortuity of the situs" of the accident. 431 U.S. at 672. It was unlikely that Congress, in enacting the FTCA, intended the government's vast military undertaking with its distinctively federal character to be regulated by "the law of the place where [a negligent] act or omission occurred." 28 U.S.C. 1346(b); *Feres* v. *United States*, *supra*, 340 U.S. at 142-143. It is equally improbable that Congress, in enacting the Public Vessels Act, intended to incorporate in that statute the anomalies that flow from the court of appeals' decision in this case. Had the injury to the individual claimants in this case resulted from the mutual fault of the United States and the respondent during an unloading operation on a pier, for example, respondent's claim for contribution would be barred. Not only does the availability of contribution in the Fourth Circuit now depend on whether the injury takes place at sea, on land, or in the air, but the law applicable even to maritime collisions may vary with the waters where they occur. The right to and extent of contribution

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sonal injuries are precluded. But the case is no different from collisions on land or in the air between private and military vehicles or airplanes, and there is no doubt that in those cases *Stencel Aero* would preclude indemnity or contribution claims by the private party even though claims for property damages might be allowed. Cf. *Stencel Aero Engineering Corp.* v. *United States*, *supra*, 431 U.S. at 676-677 (Marshall, J., dissenting). Perhaps more important, the testimony of military personnel in that context would not put them in an adversarial role against their command, since the serviceman has no personal interest in assuring recovery by the private party. On the other hand, when the serviceman sues a private shipowner and the United States is a third-party defendant, the United States is encouraged to "assert against the [serviceman] any defenses which the [private shipowner] has to the [serviceman's] claim." Fed. R. Civ. P. 14(a). And to insure against the private vessel owner's being unable to satisfy the serviceman's claim, the serviceman could find it in his interest to establish a larger share of proportionate fault on the part of the United States in order to maximize his recovery.

thus are subjected to the vagaries of foreign, rather than state, law. See generally *Lady Nelson, Ltd.* v. *Creole Petroleum Corp.*, 286 F.2d 684, 686 (2d Cir. 1961); *The Mandu*, 114 F.2d 361, 362 (2d Cir.), cert. denied, 311 U.S. 715 (1940); *States Marine Lines, Inc.* v. *The M/V Kokei Maru*, 180 F. Supp. 255, 256 (N.D. Cal. 1960); G. Gilmore & C. Black, *The Law of Admiralty* 489 (2d ed. 1975).

2.a. The court of appeals felt free to disregard these weighty considerations precluding contribution for injuries to servicemen because, it said, "[n]othing in *Feres*, *Stencel Aero*, or the cases that follow convinces us that the Supreme Court intended to alter the *Weyerhaeuser* rule. Until that Court expresses its intention to modify the rule in *Weyerhaeuser*, we are bound to follow it" (App. A, *infra*, 3a-4a). *Weyerhaeuser Steamship Co.* v. *United States*, *supra*, involved a collision between an Army dredge and a private vessel, in which a Civil Service employee aboard the Army dredge was injured. The owner of the private vessel brought an action against the United States under the Public Vessels Act and claimed, as part of its damages, a portion of the amount it had paid to the Army's civilian crew member. This Court began its opinion by pointing out that "the Public Vessels Act 'was intended to impose on the United States the same liability * * * as is imposed by the admiralty law on the private shipowner * * *.' " 372 U.S. at 600, quoting *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, 228 (1945). It then rejected the government's contention that the admiralty rule of divided damages was displaced by the exclusive liability provision in the Federal Employees' Compensation Act (FECA) (now codified at 5 U.S.C. 8116). The FECA, like the Veterans' Benefits Act, affords a statutory compensation scheme for federal employees and explicitly states that the government's liability under the Act "is exclusive * * * of all other liability * * * to the employee * * * and any other person otherwise entitled to recover damages from the United States * * * because of the

injury or death [of the employee]."[5] The Court nevertheless concluded that the divided damages rule "which, for more than 100 years, has governed * * * the correlative rights and duties of two shipowners whose vessels have been involved in a collision in which both were at fault[,] * * * must prevail over a statutory provision which * * * limited the liability of one of the shipowners * * *." 372 U.S. at 603.[6]

b. The apparent inconsistency between *Feres* and *Stencel Aero* on the one hand, and *Weyerhaeuser* on the other, is a conflict that only this Court can finally resolve. The government believes that such a decision must ultimately sustain the applicability of *Stencel Aero* to a case such as this. The court of appeals' decision took no account, for example, of the intrusion on military discipline and the anomalous treatment of sailors caused by a contrary result. Moreover, this Court has recently granted certiorari in *Lockheed Aircraft Corp.* v. *United States*, No. 81-1181 (Apr. 5, 1982), to consider the scope of the rule laid down in *Weyerhaeuser* and the force of the FECA's

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[5] The language in the current version, 5 U.S.C. 8116(c), quoted above, differs slightly from that in effect when *Weyerhaeuser* was decided. See 372 U.S. at 599.

[6] To the extent that the rule in *Weyerhaeuser* depended on the century-old pedigree of the divided damage rule, it is open to question after the decision in *United States* v. *Reliable Transfer Co.*, 421 U.S. 397 (1975). In *Reliable Transfer* this Court abandoned the rule of equally divided damages long applied in cases—like *Weyerhaeuser*—arising from mutual fault collisions and replaced it with a rule of proportionate division according to fault. In the course of its decision this Court stressed the role of the judiciary to take "the lead in formulating flexible and fair remedies in the law maritime * * *." 421 U.S. at 409. It also emphasized that " 'the concept of "settled expectation" would be reduced to an absurdity were it to be applied to a rule of damages for negligent collision.' " *Id.* at 410, quoting G. Gilmore & C. Black, *supra*, at 531. Those comments apply with equal force to an interpretation of the divided damages rule that would ignore the force of the considerations underlying this Court's decisions in *Feres* and *Stencel Aero*.

limitation-of-liability provision as applied to non-maritime indemnity claims. Under these circumstances it is especially appropriate for this Court to provide direction to the lower federal courts about which of two conflicting yet apparently controlling precedents they should follow. See *Stencel Aero Engineering Corp.* v. *United States*, *supra*, 431 U.S. at 670 ("In this case we must resolve the tension between *Feres* and [*United States* v.] *Yellow Cab" Co.*, 340 U.S. 543 (1951)); *United States* v. *Brown*, *supra*, 348 U.S. at 111 ("The case is here on a petition for certiorari which we granted * * * because of doubts as to whether *Brooks* v. *United States*, 337 U.S. 49, or *Feres* v. *United States*, 340 U.S. 135, controlled this case").

3. It is particularly important for this Court to resolve the uncertainty that now exists in this area of the law, because maritime collisions involving the military—though not commonplace—occur with unfortunate frequency, and the great number of personnel threatened with injury or death in such incidents increases the government's exposure to monetary liability far beyond the limits fixed by the Veterans' Benefits Act. For example, actions arising out of the collision between the USCGC CUYAHOGA and an Argentine flag vessel, in which 12 Coast Guardsmen were killed, are currently pending in the United States District Courts for the Districts of Maryland and Massachusetts. *Empresa Lineas Maritimas Argentinas, S.A.* v. *United States*, Civ. No. T-78-2106 (D. Md.); *Martha S. Makin, et al.* v. *Empresa Lineas Maritimas Argentinas, S.A.*, 78-2810-N, *et al.* (D. Mass.). Should the servicemen's representatives prevail against the private shipowner, the United States may be open to indirect liability in the Maryland action under the Fourth Circuit's decision in this case. The United States has also entered into a stipulation in *In re Kingston Shipping Co. and Apex Marine Corp.*, Civ. No. 80-134-T-GC (M.D. Fla.), to pay 60% of the damages assessed against the private shipowner for the wrongful deaths of 23 Coast Guardsmen, contingent upon the ultimate resolution of this case. We are informed that the government's potential liability in these two actions alone could approximate $9 million. Another pending incident is the July 22, 1980, collision of

the aircraft carrier USS MIDWAY and a foreign flag ship in the Phillipine Sea, in which four of the MIDWAY's crew were killed or injured. Still other incidents involving only property damage illustrate the regularity with which such collisions take place.[7] It is often only a matter of good fortune that such accidents do not result in serious injuries or loss of life.

The court of appeals' conclusion is particularly unfortunate because the United States' largest naval base—at Norfolk, Virginia—is located within the jurisdiction of the Fourth Circuit, as is another large naval installation at Charleston, South Carolina. Moreover, under the venue rules applicable to Public Vessels Act cases, many collisions that occur outside the waters covered by the Fourth Circuit may nonetheless be litigated in that circuit. Section 4 of the Act, 46 U.S.C. 784, provides:

> Such suit[s] shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. * * *

In other words, when a collision takes place outside the territorial waters of the United States, the private vessel owner may

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[7] One example is the collision on March 22, 1982, off Cape Henry, Virginia, between a Turkish vessel and the nuclear submarine USS JACKSONVILLE. Another, more highly publicized, incident was the collision between the USS GEORGE WASHINGTON and the M/V NISSHO MARU in the Japan Sea in April 1981. An action arising out of the latter incident has recently been filed in the United States District Court for the Southern District of New York. *China National Technical Import Corp., et al.* v. *United States*, 82 Civ. 2205 (S.D.N.Y.)

generally sue in the Fourth Circuit if it has an office there or (in the case of a foreign owner) if it has no office in this country. See also Fed. R. Civ. P., Supplemental Rules for Certain Admiralty and Maritime Claims, Rule F(9) (venue in limitation-of-liability actions). Given the legal uncertainty occasioned by the influence of *Weyerhaeuser* on this area of the law, those who collide with government ships will undoubtedly prefer to take advantage whenever possible of the generous contribution doctrine espoused by the court of appeals in this case, with the consequent impairment of military discipline and decisionmaking.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JUNE 1982